UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:01CR173DJS(MLM)
	)	
DAMON GALBREATH,	)	
MICHAEL GOODWIN,	)	
MARK PEARSON,	)	
DERON HENDRIX,	)	
RANDY DAVIS,	)	
TERRANCE JONES,	)	
	)	
Defendants.	)	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE CONCERNING
ELECTRONIC SURVEILLANCE

This Report and Recommendation deals only with motions filed by the six above-named defendants in this fourteen defendant case to suppress the contents of electronic surveillance by means of wiretaps.[1] Pretrial matters were referred to the undersigned under 28 U.S.C. 636(b).

In order to accommodate the number of defendants who originally filed electronic surveillance suppression motions and the schedules of counsel, three Evidentiary Hearings concerning the wiretaps were held: May 23, May 24, and May 31, 2001. The government presented essentially identical evidence in each hearing.[2] Counsel for defendants cross-examined at length.

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[1] All other pretrial motions have been or will be dealt with in separate R&R's or have been withdrawn.

[2] The government's documentary evidence is in three large binders. There is an "Index of Title III Exhibits" Gov.Ex.70. The three volumes are paginated in handwritten numbers at the bottom of each page from 1 to 1,213. Each exhibit is described, numbered and the page reference given in the Index. The court incorporates by reference as if fully set out herein the entire three volumes of exhibits introduced by the government. DEA Special Agent Christian A. Ebner testified at all three hearings.

Based on the testimony and evidence adduced and having had an opportunity to observe the demeanor and evaluate the credibility of the witness, the undersigned makes the following findings of fact and conclusions of law.

Findings of Fact and Conclusions of Law

Title III of the Omnibus Crime Control and Safe Streets Act of 1968 codified at 18 U.S.C. § 2501, *et seq.,* which provides for the interception of wire, oral or electronic communications specifically permits an "aggrieved person" to move to suppress the contents of such interceptions on the grounds that:

(i) the communication was unlawfully intercepted;
(ii) the order of authorization or approval under which it was intercepted is insufficient on its face;
(iii) the interception was not made in conformity with the order of authorization or approval.

18 U.S.C. § 2518(10)(a). This section also provides that upon filing such a motion, such portions of the intercepted communications or evidence derived therefrom shall, as the judge determines to be in the interests of justice, be made available to the aggrieved person. As an initial matter, in the present case, the government has made available to counsel for all the defendants all the documentary evidence as well as all of the intercepted communications. Because of the enormous volume of interceptions, portions of the interceptions relating to specific defendants have been provided to each specific defendant as well. The court finds that this portion of the statute has been meticulously observed by the government.

With regard to the grounds set out above which the statute specifies are permitted for a motion to suppress the evidence, the court finds that although articulated in most of the motions in boilerplate form, the sufficiency on the face of the order of authorization was not seriously challenged. 18 U.S.C. § 2518(10)(a)(ii). The main challenges were directed to probable cause and

minimization. Cross examination dealt mainly with this and with SA Ebner's experience or lack thereof. (This was SA Ebner's first wiretap.) The court finds that SA Ebner's experience is not relevant to any issue except to the extent it concerns whether **this** wiretap was executed properly.

This fourteen defendant case deals with the investigation of offenses involving possession of cocaine and heroin with the intent to distribute, the distribution of cocaine and heroin and a conspiracy to commit these controlled substance crimes. In connection with this investigation, the government sought authority to install a wiretap on three telephones. Title III sets forth a comprehensive legislative scheme regulating the interception of oral and wire communications. "This legislation attempts to strike a delicate balance between the need to protect citizens from unwarranted electronic surveillance and the preservation of law enforcement tools needed to fight organized crime." United States v. Phillips, 540 F.2d 319, 324 (8th Cir. 1976). The statute provides for the interception of wire, oral and electronic communications only under certain circumstances and only if specific procedure are followed. The undersigned will take up in order the procedures required by the statute.

I. AUTHORIZATION

18 U.S.C. § 2516 provides that the Attorney General of the United States may specially designate the Assistant Attorney General, any acting Assistant Attorney General, any Deputy Assistant Attorney General or any Acting Deputy Assistant Attorney General of the Criminal Division to exercise the power conferred on the Attorney General by 18 U.S.C. § 2516 to authorize an application to a federal district judge for an order authorizing the interception of wire, oral and electronic communications. Under the power designated by special designation of the Attorney General pursuant to Order No. 95-1950 of February 13, 1995, an appropriate official of the Criminal Division authorized the instant application. The government introduced and attached to its

Application copies of the Attorney General's Order of Special Designation (A.G. Order No. 1950-95, dated February 13, 1995) and Memorandum of Authorization approving this Application, dated May 1, 2000. Attachments to Gov.Ex.1, p. 12-15. An authorization for such an application is presumed to be valid unless the person challenging the application makes a *prima facia* showing that it was not so authorized. See United States v. O'Connell, 841 F.2d 1408, 1416 (8th Cir. 1988), cert.denied, 488 U.S. 1011 (1989). In this case, none of the defendants challenged the authorization and the court finds that all requirements of 18 U.S.C. § 2516 regarding the authorization were fully observed.

II. APPLICATION

The application for a wiretap must include the identity of the law enforcement officer making the application, the person authorizing the application, a full and complete description of the facts relied on, including details of the alleged offense; a description of the facilities where the communications are to be intercepted; a description of the communications sought to be intercepted; the identity of the persons whose communications will be intercepted; whether other investigative procedures have been tried; and the period of time for which the interception is requested. The application must also indicate whether previous applications involving the same facilities, persons or places have been made. 18 U.S.C.§ 2518(1). The application may include additional evidence in support. 18 U.S.C. 2518(2).

Here, the Application, Gov.Ex.1 p. 1-15, contained all the statutorily required elements: it contained an authorization from an Assistant Attorney General designated to make such authorization, and included the items regarding the persons, places and communications sought to be intercepted. It also indicated that it sought to intercept communications for no more than thirty (30) days and described all previous applications. There was no error in the form of the Application.

Pursuant to 18 U.S.C. § 2518(2), the Application was supported by a sixty (60) page Affidavit. Gov.Ex.2 p. 16-76. This Affidavit expanded and described in detail the information contained in the Application including a full and complete statement of the facts and circumstances relied upon by the applicant to justify the belief that an order should be issued including:

> (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) except as provided in subsection (11) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted.

18 U.S.C. § 2518(b). In the present case, the Application complies fully with the statute.

III. AFFIDAVIT

As noted above in footnote 2, the court incorporates by reference as if fully set out herein, the Affidavit submitted by Drug Enforcement Agency (DEA) Special Agent (SA) Christian A. Ebner. However, a general summary may prove helpful. This summary does not include all of the information in the Affidavit but is intended merely to assist the court. The entire Affidavit as submitted in Gov.Ex.2 is the basis of the probable cause. The Affidavit submitted by SA Ebner states that there is probable cause to believe that **Kalil Morris, Barry Dilworth, Damon Galbreath, Lashaun Holmes**, **Vernell Latchison, Deron Hendrix, Ihsan Mahmud, Matthew Mayo, Michael Goodwin** and others known and unknown had committed or were committing narcotics offenses in violation of 21 U.S.C. § 841(a)(1), 846, 843(b), 848; interstate travel to facilitate an illegal narcotics business in violation of 18 U.S.C. § 1952 and money laundering in violation of 18 U.S.C. § 1956 and 1957. He stated he was an investigative and law enforcement officer of the United States within the meaning of 18 U.S.C. § 2510(7) and was empowered by law to conduct investigations of and make arrests for offenses enumerated in 18 U.S.C. § 2516.

The Affidavit specifies the wiretaps sought: that is, the interception of wire, oral and electronic communications from three target telephones: target phone #1 ("T-1"), a Southwestern Bell Wireless brand cellular telephone bearing the number 314-952-3603 subscribed in the name of C.A.E. Enterprises, Inc.[3]; target phone #2 ("T-2"), a Sprint Spectrum L.P. brand cellular telephone bearing the number 314-369-8120, utilized primarily by Barry Dilworth and subscribed by Tahon Anderson who resides with Barry Dilworth at 12710 Meadowdale; and target phone #3 ("T-3"), a Southwestern Bell land line telephone serving the residence of Barry Dilworth at 12710 Meadowdale, St. Louis, bearing the number 314-741-7804.[4]

The Affidavit gives pertinent background information. Barry Dilworth was named in three prior DEA investigations as early at 1992. In that year, a defendant/Confidential Source (CS) told DEA that he/she distributed over nine kilograms of cocaine a week and that Barry and Kenneth Dilworth and Damon Galbreath were some of his best customers for the purchase of multi-kilos of cocaine. In 1997, another CS said Barry Dilworth was distributing three-five kilos of crack cocaine per month. He identified a date on which Barry Dilworth obtained crack cocaine from sources in California. Also, in 1997 a CS said the Dilworth group distributed fifteen-twenty kilograms of cocaine per month. In June, 1999, a Confidential Informant (CI) said Barry Dilworth obtained an unknown number of kilograms of cocaine.

As further background information, the Affidavit states Damon Galbreath was named in at least sixteen DEA investigation including information that Galbreath was seen in possession of

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[3] The Affidavit notes that this phone was provided to Kahlil Morris by Confidential Source #1 after Morris discarded his original cellular phone, 314-283-3307, called the "predecessor phone."

[4] The Application and Affidavit also apply to any subsequently changed phone numbers using the ESN of the cell phones and the same cable, pair and binding posts for the land line. It also includes any background conversations in the vicinity of the target phones.

twelve kilograms of cocaine; Galbreath was traveling to Atlanta to purchase fifty kilograms of cocaine; Galbreath purchased twenty kilograms of cocaine for $30,000 per kilo; and a federal search warrant was executed at Galbreath's residence resulting in the uncontested seizure of large amounts of currency, jewelry and furs. In addition, three separate CI's gave DEA information that Galbreath is a multi-kilogram cocaine distributor; had fifteen kilograms of cocaine transported over a twelve month period; and distributed approximately 30 kilograms of cocaine in 1988-1989. A federal wire interception of Galbreath's then-phone and pager in 1993 did not result in prosecution. Former girlfriends and relatives also gave information about holding currency for Galbreath, running his name in REJIS, placing his vehicles in another's name and requesting information about whether his phone was tapped.

The Affidavit states the current investigation began in 1999 when DEA special agents and St. Louis Police Narcotics detectives interviewed a confidential source (CS #1) who gave detailed information about a closely-knit group of subjects currently distributing multi-kilo quantities of cocaine and crack and tar heroin. CS #1 said the group included targets Morris, Latchison, Hendrix, the Dilworth family and Holmes.[5] CS #1 described the relationship between and the connections among the targets and much of this information was corroborated. CS #1 said the group has numerous sources for its supply and that Barry Dilworth had a source in Los Angeles; Morris asked CS #1 to go to Florida with him to purchase a multi-kilo cocaine package; and the subjects frequently pooled their money to purchase cocaine but on other occasions Barry Dilworth, Morris and Holmes would act on their own. CS #1 said the group is in frequent contact. Both Morris and Barry Dilworth spoke separately to CS #1 about problems with a drug shipment.

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[5] The Affidavit states Holmes is a member of the "Beam Street Bloods" and was arrested for Murder, First Degree for a gang-related drive-by shooting.

The Affidavit details extensive dealings of CS #1 with Kahlil Morris which are more fully set out at ¶17-23. During 1998 and 1999, CS #1 purchased an aggregate of approximately two kilos of crack cocaine from Morris. Initially, the purchases were small, however in late 1998, Morris told CS #1 that he was now in a position to sell larger quantities of crack and no longer wished to sell packages of less than one-fourth kilo. In late 1998, CS #1 purchased a one-half kilo package of crack from Morris for $15,000. Throughout 1999, CS #1 did purchase several smaller package of crack from Morris but Morris sold it grudgingly and constantly encouraged CS #1 to buy larger packages. CS #1 described the manner in which drug transactions with Morris would take place. On November 4, 1999, at DEA's direction, CS #1 contacted Morris on Morris' predecessor cell phone and CS #1 made arrangements for CS #1 to purchase three and one half ounces of crack cocaine from Morris. The conversation was recorded. At the agreed time, surveillance units observed Morris and CS #1 transact the sale in the manner as described in detail by CS #1. The package delivered by Morris contained 93 grams of crack cocaine. An examination of air time summaries for Morris' predecessor cell phone showed that Morris called Damon Galbreath's cell phone on November 4, 1999 some of the calls being placed prior to the transaction and some being placed after. Galbreath ceased using this cell phone. Morris' predecessor cell phone called Barry Dilworth's cell phone, T-2, prior to the transaction. Morris also called his girlfriend three times on the cell phone.

After using his predecessor cell phone to negotiate the 11/4/99 cocaine purchase, on approximately 12/30/99 Morris discarded that phone and told CS #1 he knew he was being investigated by DEA (see ¶78 of the Affidavit). At DEA's direction, CS #1 met with Morris and offered to provide him with a different cell phone in consideration for a price reduction on a future drug purchase. Morris took the cell phone from CS #1 on 2/16/00. This phone is T-1 in the

Application. Pen Register records for T-1 show that on Morris' first day of possession of the phone he called Damon Galbreath's cell phone eleven times. In March, at DEA's direction, CS #1 called T-1 and spoke with Kahlil Morris. They discussed Morris selling marijuana but that he did not have cocaine currently available. CS #1 told Morris that he was interested in buying three and one-half ounces of cocaine and Morris agreed to contact him when cocaine was available. Also on that same date at DEA's direction, CS #1 called Barry Dilworth at T-2 and asked to purchase four and one-half ounces of crack. Dilworth indicated he was running low on cocaine but might be able to make the sale if CS #1 was willing to accept it in powder form. They agreed to talk later and both of the conversations above-noted were recorded.

Morris told CS #1 that he usually obtains four kilos of cocaine at a time. In addition, during January, 2000 Morris indicated that he was also selling heroin and repeatedly asked CS #1 whether he was interested in purchasing "tar" heroin. CS #1 also gave information about Morris' girlfriend, Sheila Bradford.

The Affidavit also details CS #1's dealings with Barry Dilworth. Prior to his DEA cooperation, CS #1 said he purchased in excess of one kilo of cocaine from Barry Dilworth on four occasions. Vernell Latchison rode with Barry Dilworth during the transactions and would physically carry the cocaine packages from Dilworth's vehicle to CS #1's vehicle and then return with the money. During early March, 2000, CS #1 became more friendly with Barry Dilworth and had a pager number by which he could contact him. CS #1 visited Barry Dilworth at Dilworth's residence at 12710 Meadowdale and CS #1 told investigators that on or about March 14, 2000 while at Dilworth's residence, CS #1 observed Dilworth's pager activate. CS #1 saw Dilworth read the pager and then dial his residential telephone (T-3). Dilworth then spoke with "Mike". Dilworth told Mike that Dilworth was "collecting my money" and would call back later. CS #1 told investigators he

believed Dilworth to be talking about drug proceeds and Mike to be a current source of cocaine for Dilworth. Subscriber information on the telephone called by Morris was the residential telephone for Michael Goodwin at 8300 Racquet. Pen Register information confirmed that Dilworth called Goodwin's residence as indicated by CS #1. CS #1 also said that he was recently told by Vernell Latchison that Barry Dilworth was currently getting cocaine from a subject known as "Mike", described by Latchison as a significant cocaine trafficker.

CS #1 added that based on his conversations with Barry Dilworth, Kenneth Dilworth, Vernell Latchison and Steve Norman, CS #1 was aware that Norman had frequently acted as a courier for Barry Dilworth back and forth to Southern California to "mule" cocaine to St. Louis. In late March or early April, 1998, Norman got into a verbal argument with Barry Dilworth because Dilworth had not paid Norman for muling a particular cocaine load from California to St. Louis. Dilworth accused Norman of stealing some of the cocaine which Norman denied. During the argument, Norman pulled a handgun on Dilworth and threatened to kill Dilworth. Several days later, Norman was found dead, supposedly having hung himself. Inquiry with the St. Louis Police Department showed that on April 10, 1998, Norman was, in fact, found dead from hanging. The medical examiner's investigation ruled the death a suicide.

CS #1 also purchased cocaine from Kenneth Dilworth, the brother of Barry Dilworth, and the last purchase was almost a year previous to the Application. CS #1 stated that Kenneth Dilworth always seemed overly cautious during drug transactions and would not deal in large quantities with CS #1. (It should be noted that Kenneth Dilworth at the time of the Application was pending voluntary surrender for a twenty-four month sentence on a federal indictment for possession with intent to distribute cocaine.)

The Affidavit also details CS #1's dealings with Lashaun Holmes. CS #1 negotiated cocaine purchases with Lashaun Holmes and once Holmes offered to sell CS #1 a kilo of crack for $25,000 but CS #1 was not financially able to make the purchase. CS #1 added that Holmes was extremely leery of telephones and switched telephones frequently. CS #1 had asked Barry Dilworth for Holmes' phone number in January, 2000 and Dilworth provided CS #1 with the number. Subsequent examination of air time summaries for Kahlil Morris' predecessor phone showed eight calls placed by Morris to Holmes' phone from October 9, 1999 to December 30, 1999.

The Affidavit also details CS #1's dealings with Vernell Latchison. In November, 1999, at DEA's direction, CS #1 contacted Vernell Latchison by paging him. Latchison returned the call and spoke about CS #1's purchasing four and one-half ounces of crack from Latchison and Barry Dilworth. During the conversation, at DEA's direction, CS #1 demanded to speak with Barry Dilworth to verify that the cocaine would be, in fact, coming. Latchison, although initially reluctant to three-way a phone call to Barry Dilworth because of Dilworth's aversion to using telephones for drug transactions, eventually agreed and did, in fact, bring Dilworth into the conversation by way of a conference call between Latchison, Barry Dilworth and CS #1. This conversation was recorded.

The following day, December 1, 1999, CS #1 spoke with Latchison by phone. Latchison said Barry Dilworth wanted to wait until the following day to make the cocaine sale. The following day, CS #1 was contacted by Latchison who stated he needed a ride to Barry Dilworth's house. As observed by law enforcement surveillance, CS #1 drove to Latchison's residence and picked him up. CS #1 then drove him to the vicinity of Dilworth's residence. Latchison had CS #1 drop him off around the corner from Dilworth's house so that CS #1 would not see where Dilworth lived. Surveillance then observed Latchison walk to and enter Dilworth's residence at 12710 Meadowdale. Later, Latchison and Barry Dilworth were observed leaving the residence together in Dilworth's

truck. Approximately two hours later, CS #1 was paged to call the house phone at Barry Dilworth's residence, T-3. Upon calling the number, CS #1 spoke with Latchison who indicated that Latchison and Dilworth were almost ready to transact the cocaine buy. Shortly thereafter, CS #1 placed a call to Latchison's pager. Latchison answered by calling CS #1. Subsequent examination of the air time summaries of Barry Dilworth's cell phone, T-2, showed the call from Latchison to CS #1 was made from T-2. CS #1 and Latchison agreed to meet fifteen minutes later and make the transaction. These conversations were recorded. As observed by surveillance, Barry Dilworth and Latchison arrived at a meeting spot in Dilworth's truck. Dilworth remained in the truck while Latchison went to CS #1's vehicle where the four and one-half ounce crack cocaine purchase for $3,650 took place. Review of air time summaries during the period of the negotiation for this cocaine purchase show that T-2 was used by Dilworth to call Michael Goodwin's residence and Goodwin's cell phone three times on T-2. Dilworth also used T-2 to call Goodwin's parents' home and used T-2 to call Goodwin's cell phone eight times on December 2, 1999. Dilworth used T-2 to call Deron Hendrick's pager on 12/2/99 and the Pen Register verifies that Dilworth's T-2 called CS #1's DEA undercover phone three times on December 2, 1999.

The Affidavit deals with CS #1's dealings with Deron Hendrix. During 1999, CS #1 made multi-ounce purchases of cocaine from Hendrix totaling approximately thirteen ounces for which CS #1 paid approximately $13,500. In February of 2000, at DEA's direction, CS #1 placed a page to Deron Hendrix who returned the page and agreed to sell CS #1 two ounces of cocaine. During tape recorded conversations between Hendrix and CS #1 which led to the transaction, Hendrix indicated he was calling from Hendrix' girlfriend's apartment and surveillance subsequently corroborated that. An audio recording was made of a drug transaction between Hendrix and CS #1

in CS #1's vehicle. During this conversation, Hendrix indicated he had an additional nine ounces of cocaine available.

Beginning in March, 2000, DEA Special Agents and St. Louis Police Department Narcotics Detectives began interviewing Confidential Source #2 (CS #2). Much of CS #2's background information on the various conspirators was verified and much of the information provided by CS #2 corroborated information previously provided by CS #1. The Affidavit details CS #2's dealings with Kahlil Morris whom he/she had known for several years. He/she said he/she had heard countless conversations with Dilworth family members and Morris himself that Morris and Barry Dilworth had purchased multi-kilograms of cocaine over a period of several years. CS #2 recalled that in 1999, CS #2 sold nine ounces of cocaine to Morris which Morris was to re-distribute and added that Morris was currently selling twenty-five pound lots of marijuana.

The Affidavit also details CS #2's dealings with Barry Dilworth. CS #2 had known the Dilworth family for most of his/her life and had heard for years that Barry Dilworth was a substantial drug distributor. In early 1998, CS #2 began purchasing ounce and multi-ounce quantities of cocaine from Barry Dilworth. CS #2 described how he/she would contact Barry Dilworth by pager and how the drug transactions would take place by using pager numbers and various telephones.

The Affidavit also details CS #2's dealings with Lashaun Holmes whom CS #2 had known for approximately seven years. CS #2 described Holmes as an associate of Kahlil Morris and Barry Dilworth in drug trafficking. He/she added that Holmes switches telephones constantly and does not carry a pager which confirms CS #1's description of Holmes' distrust of telephones. On March 13, 2000, DEA agents tape recorded a conversation between Holmes and CS #2 concerning the purchase of one quarter kilo of cocaine. On March 17, 2000, CS #2 met with investigators in preparation for a cocaine purchase from Holmes and during the meetings, CS #2 received a phone

call from Holmes who agreed to sell six ounces of crack to CS #2 for $3,900. They agreed on the drug transaction and audio and video tapes of the meeting were made. During the course of the transaction, Holmes called CS #2 and advised he would arrive momentarily to conduct the transaction. They met and Holmes advised that the cocaine would be delivered in a few minutes. Surveillance observed that one of Barry Dilworth's brothers, Anthony Dilworth, was involved in this transaction. Audio and video tapes of the transaction were made.

The Affidavit also details CS #2's dealings with Michael Goodwin. In the fall of 1998, CS #2 began purchasing cocaine from Michael Goodwin. Based on conversations with Barry Dilworth and other members of the Dilworth family, CS #2 knew that Goodwin was a significant cocaine distributor and knew that Barry Dilworth had previously obtained multi-kilo quantities from Goodwin. CS #2 purchased kilograms of cocaine from Goodwin on at least four occasions in late 1998 and early 1999 paying $24,000 for each kilo. CS #2 described how the transactions with Goodwin took place. Air time summary records for T-2, Dilworth's cell phone, showed calls placed to the residence of other members of the Goodwin family which Michael Goodwin claimed as his home residence. In late 1998, CS #2 and Barry Dilworth decided to jointly purchase two kilos of cocaine from Goodwin. They met on a White Castle parking lot. Dilworth said "That's Little Damon" and CS #2 recalled having been told about Little Damon by Goodwin on prior occasions. Dilworth gave Little Damon a box containing $48,000 which was the commingled money of CS #2 and Dilworth. Little Damon is a moniker for Damon Galbreath. Goodwin described Galbreath as a distributor of significant amounts of cocaine and CS #2 added that he/she knew from numerous conversations with Goodwin that Lashaun Holmes was also getting kilos of cocaine from Goodwin during 1998 and 1999.

In addition to the above information acquired from CS #1 and CS #2, the agents conducted Pen Register and air-time summary analyses of Morris' predecessor cell phone (314-283-3307) which he discarded on or about December 30, 1999. The analyses of the air-time summaries for the predecessor phone are set out in thorough detail at ¶48 of the Affidavit and show the numerous times the predecessor phone was used to contact persons of interest to the investigation.

On 2/4/2000, United States Magistrate Judge Thomas C. Mummert authorized a Pen Register to be installed on T-1 for a period of sixty days. A subsequent sixty day extension was signed by United States Magistrate Judge David D. Noce. This Southwestern Bell wireless phone was being used by Kahlil Morris and the Pen Register records show that from 2/16/2000 through 4/24/2000, there were 1,465 calls made from the phone. ¶49 of the Affidavit details all of the calls together with the corresponding subscriber information made to anyone with relevancy to the investigation.

Call detailing and air-time summary records for T-2, the Sprint PCS cell phone used by Barry Dilworth, is set out in detail at ¶50 of the Affidavit and Pen Register analyses of T-2 is set out in detail at ¶51. Each of these analyses shows repeated and numerous calls to people involved in the investigation. ¶53 details Pen Register information for T-3 and again shows numerous calls and subscriber information for those calls for people involved in the investigation. All the air-time summaries include both incoming and outgoing calls. For example, the Pen Register on T-3 from 2/2/2000 through 4/24/2000 showed 5,894 calls of which 3, 495 were outgoing from T-3 and 2,399 of the calls were incoming to T-3.

In addition, the Affidavit also details the execution of federal and state search warrants. During the period 3/5/90 through 4/21/98, approximately twelve search warrants were executed which in one way or another involved the target subjects, or relatives or associates of the targets. In some instances, the search warrants took place at a residence of a target, a residence of a target's

associate or relative, or a place where one or more of the targets was present and arrested. During the execution of these warrants, narcotics, documents, currency and guns were seized.

Based on the foregoing, SA Ebner's Affidavit states there is probable cause to believe that the interception of wire communications was the only available technique that had a reasonable likelihood of securing the updated evidence necessary to prosecute this wide-ranging and on-going conspiracy. Pen Registers and air-time summaries show the targeted subjects, in spite of their reluctance to do so, use their cell phones and land line phones to conduct their narcotic business. These techniques are insufficient to reveal the full scope of the narcotics trafficking organization and cannot identify all of the associates and co-conspirators. Therefore, the Affidavit requested electronic surveillance of the three targeted telephones.

A. Probable Cause:

Under 18 U.S.C. §2518(3) the court may issue an order authorizing the interception of wire, oral or electronic communications only if it finds probable cause to believe that (1) a person is committing, has committed or is about to commit one of the crimes enumerated in 18 U.S.C. 2516; (2) communications concerning such crimes will be obtained through the interception; (3) normal investigative procedures have been tried; and (4) the place where the communications are to be intercepted is being used in connection with the commission of such crimes or is used by a target subject. Even from the general summary set out in the findings of fact above, it is clear that the Affidavit provided probable cause that the named individuals were conspiring to commit and committing narcotics violations as enumerated in 18 U.S.C. § 2516. It is also clear that communications concerning these offenses would be obtained through the interception and that the

places where the communications were to be intercepted were being used in connection with the offenses.

Courts must test applications for wiretaps and eavesdropping in a " 'practical and common sense fashion'". United States v. Garcia, 785 F.2d 214, 221-22 (8th Cir. 1986) quoting United States v. Brick, 502 F.2d 219, 224 n.14 (8th Cir. 1974). See also United States v. Ventresca, 380 U.S. 102, 109 (1965). Those against whom the resulting evidence is admitted have the burden of proving the wiretap was unlawfully obtained or used. Garcia, 785 F.2d at 222; United States v. Phillips, 540 F.2d 319, 385 (8th Cir.); cert.denied, 429 U.S. 1000 (1976). Probable cause for the issuance of a wiretap should be evaluated under the same standard used to evaluate probable cause for the issuance of a search warrant. United States v. Fairchild, 189 F.3d 769, 775 (8th Cir. 1999). "Specifically, probable cause is present if the totality of the circumstances reveals that there is fair probability that a wiretap will uncover evidence of a crime." Fairchild, 189 F.3d at 775. In this case there is no question that the Application and Affidavit contained the fair probability that the wiretaps would uncover evidence of a crime.

B. Previous Applications

Pursuant to 18 U.S.C. § 2518(1)(e), the Affidavit fleshes out the Application on the issue of prior applications. It states that the affiant caused a search of computerized data bases of the FBI and DEA files and that he is not aware of any previous wire, oral or electronic interception applications for any of the named targets or facilities to be intercepted with the exception of Damon Galbreath. Between the dates of August 4, 1993 through September 2, 1993 and September 28, 1993 through October 18, 1993, Title III electronic surveillance was conducted on telephones utilized by Galbreath. This monitoring was authorized by the Honorable Donald J. Stohr, United States District

Judge for the Eastern District of Missouri. In the instant case, the Application and Affidavit comply fully with 18 U.S.C. § 2518(i)(e) on the issue of previous applications.

C. Other Investigative Procedures

Pursuant to 18 U.S.C. § 2518(1)(c), the Affidavit fleshes out the Application on the issue of "whether or not other investigative procedures have been tried and failed or why they reasonably appear unlikely to succeed if tried or to be too dangerous." Id. A wiretap should be necessary and reasonable, however, "...investigators need not exhaust specific or all possible investigative techniques before a court can issue a wiretap order." United States v. Jones, 801 F.2d 304-314 (8th Cir. 1986). See also United States v. Macklin, 902 F.2d 1320, 1326-27 (8th Cir. 1990), cert.denied, 498 U.S. 1031 (1991); United States v. Smith, 909 F.2d 1164, 1166 (8th Cir. 1990), cert.denied, 498 U.S. 1032 (1991).

> [The Eighth Circuit] held in United States v. Daly, 535 F.2d 434, 438 (8th Cir. 1976) that the necessity requirement of section 2518 was meant to insure that wiretaps are not routinely employed as the initial step in an investigation. Thus, while the statute does require that normal investigative procedures be used first, it does not require that law enforcement officers exhaust all possible techniques before applying for a wiretap. [United States v.] Leisure, 844 F.2d [1347,] 1356 [(8th Cir.), cert.denied, 488 U.S. 932 (1988)]; United States v. O'Connell, 841 F.2d 1408, 1415 (8th Cir.), cert.denied, 487 U.S. 1210 (1998)...the government is simply not required to use a wiretap only as a last resort. United States v. Matya, 541 F.2d 741, 745 (8th Cir. 1976), cert.denied, 429 U.S. 1091 (1977).

United States v. Macklin, 902 F.2d 1320, 1326 (8th Cir. 1990), cert.denied, 498 U.S. 1031 (1991).

In the Affidavit, the government describes in detail the other investigative techniques employed. See Affidavit, Gov.Ex.2 at p.64-74.

Physical surveillance was used; however, while certainly helpful, it was insufficient to establish the role played by the conspirators because of the use by the subjects of counter-surveillance, "lookouts", etc. It is not necessary for the government to engage in dangerous or futile investigative techniques before applying for a wiretap. United States v. Macklin, 902 F.2d at 1327.

Grand Jury subpoenas were not utilized because the likelihood of lack of cooperation, likely invocation of Fifth Amendment rights and the impracticality of immunization of witnesses which might immunize the most culpable members of the organization. It would also alert the members of the conspiracy causing them to be more cautious or to flee. In addition, Cooperating Sources feared for their personal safety. On the other hand, dozens of administrative subpoenas were utilized to obtain telephone records. While useful, those records do not give the actual phone user or conversations.

Confidential Informants (CI) and Cooperating Sources (CS) were used extensively but had limited utility because of lack of knowledge of the scope of the conspiracy and their impeachability because of their criminal records. Some feared for their safety and all required corroboration.

Undercover agents (UC) were used to some extent but the targets were reluctant to deal directly with the UC's. In this organization, the CS's were unable to make the necessary introductions to enable the UC's to infiltrate.

Interviews of subjects or associates would not prove fruitful because they could not provide sufficient information and what they did provide would contain significant untruths which could divert the investigation. It could also alert the targets to the investigation.

Search warrants were used but at the time of the application they were dated and had only produced small quantities of narcotics. Financial records seized did not reveal the scope of the conspiracy.

Pen Registers, Trap and Trace devices and telephone tolls were used extensively to verify frequent telephone communication between the target phones and the phones of other targets. Pen Registers do not record identities of parties and cannot differentiate between legitimate and criminal calls. Trapping and tracing dialed or pulse numbers was done but this is a limited tool. Telephone

toll information which identifies the existence and length of calls from target phones to phones outside the service zone has the same limits as pen registers.

Police records were received and useful information was obtained but they reveal only past information and none of the targets' present activities.

In this case, the Affidavit explains why some procedures would likely fail in this case. The statute does not require more. Maklin, 102 F.2d at 1327. Some of the investigative techniques, while initially successful, failed to reveal the full scope of the conspiracy or present sufficient evidence against known participants. United States v. O'Connell, 841 F.2d 1408, 1415 (8th Cir. 1988); cert.denied, 488 U.S. 1011 (1989) (wiretap necessary even though much evidence had been collected prior to wiretap authorization; information revealed far-flung conspiracy which presented more difficult investigative problems). In the present case, the Affidavit sets out precisely what was tried, how successful it was, and what was not tried and why not. The necessity for a wiretap was fully demonstrated. United States v. Shaw, 94 F.3d 438, 441 (8th Cir. 1996); cert.denied, 519 U.S. 1100, (1997).

IV. COURT ORDER AND ORDERS TO SERVICE PROVIDERS

If a judge finds probable cause as set out above and also finds that other investigative techniques have been tried and failed or were unlikely to succeed if tried or were too dangerous, he may issue an order authorizing the interception of wire, oral or electronic communications. Under 18 U.S.C. § 2518(4) the Order must specify the identity of the persons whose communications are to be intercepted, the nature and location of the communication facilities where the intercept is granted, the type of communications to be intercepted, the identity of the agency and the person performing the interception and the period of time during which the interception is authorized. The

period of time may not be longer than thirty days unless an extension is granted. 18 U.S.C. § 3518(5).

In the present case, the Order signed by the Honorable Stephen N. Limbaugh on May 1, 2000 (Gov.Ex.3) complied in all respects with the statute: he found probable cause that the nine named targets and others then unknown had committed, were committing and would continue to commit offenses involving possession with intent to distribute cocaine and heroin, distribution of cocaine and heroin and conspiracy to commit the crimes. He also found probable cause that communications concerning those offenses would be obtained through the interceptions and specifically named the three target telephone numbers. He also found normal investigative procedures had been tried and failed, reasonably appeared to be unlikely to succeed or were too dangerous. The Order provided for a thirty (30) day period of interception and further ordered that the authority (as requested in the Application) apply not only to the target cellular telephones but to any changed telephone numbers subsequently assigned to the same ESN numbers. As to the target land line, the authority applied to any changed numbers subsequently assigned to the same cable, pair and binding posts. The Order included any background conversations intercepted in the vicinity of the target phones while the phones were off the hook. The Order also directed that the interception be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this statute. The Order directed the service providers to cooperate with technical assistance and not disclose the Order or the investigation.

18 U.S.C. § 2518(4) provides that a service provider

> "shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider...is according the person whose communications are to be intercepted.

18 U.S.C. § 2518(4).

The government introduced the Orders directed to the service providers:

Gov.Ex.4 is directed to Southwestern Bell Wireless for T-1, 314-952-3603;
Gov.Ex.5 is directed to Sprint Cellular for T-2, 314-369-8129;
Gov.Ex.6 is directed to Southwestern Bell Telephone Company for T-3, 314-741-7804

The Orders comply in all respects with the statute.

V. EXTENSIONS

The wiretap statute specifically provides for extensions of the time period for which the interception is authorized. 18 U.S.C.§ 2518(5) refers to "every order **and extension thereof**..." and 18 U.S.C. § 2518(1)(f) directs: "(f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception or a reasonable explanation of the failure to obtain such results."

In this case, the government applied for two extensions of the wiretaps. For each extension, the government submitted an application and affidavit, the court issued an order authorizing continued interception of oral, wire and electronic communications and orders to the three service providers.

For the first extension, the government introduced:

Gov.Ex.8	Application with attached authorizations
Gov.Ex.9	Affidavit of SA Ebner
Gov.Ex.10	Order authorizing continued interception of oral, wire and electronic communications
Gov.Ex.11	Order to service provider, Southwestern Bell Wireless for T-1, 314-952-3603
Gov.Ex.12	Order to service provider, Sprint Cellular for T-2, 314-369-8120
Gov.Ex.13	Order to service provider, Southwest Bell Telephone Company for T-3, 314-741-7804

This application includes the initial target subjects as well as four new targets: **Kahlil Morris, Barry Dilworth, Damon Galbreath, Lashaun Holmes, Vernell Latchison, Deron Hendrix, Ihsan Mahmud, Matthew Mayo, Michael Goodwin,** ***Randy Davis, Paul Dilworth, Kenneth***

Dilworth, Kytina Rene Morrow and others then unknown. The court finds that in all respects this Application complies with the requirements of the statute as more fully set out above in Section II. The Affidavit in Support contains the statutorily required information about the target subjects, the qualifications of SA Ebner, the target telephones and locations and incorporates by reference the Affidavit in Support of the government's original Application and Judge Limbaugh's Order. The Affidavit explains the information acquired from the wiretaps so far and the investigation to supplement it. It specifies the four additional persons expected to be intercepted/incriminated (in italics above) together with their pedigrees. It gives summaries by each target telephone of pertinent interceptions and the information gleaned therefrom.[6]

It also describes surveillance to try to verify the interceptions. As in the original Affidavit, it describes alternative investigative techniques, prior applications, compliance with minimization and a requested time of no more than thirty days. The Affidavit complies in all respects with the statute as does Judge Limbaugh's Order authorizing continued interceptions signed May 30, 2000 and his Orders to service providers.[7]

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[6] Without repeating the contents of each of the summaries, one example of the information is representative. With regard to target telephone #1 (T-1), the information indicated that Kahlil Morris and his co-conspirators were negotiating narcotics transactions.

> "Interception No. 46 occurred on May 3, 2000 at 5:45 P.M. and was an outgoing call to 314-369-8120 (Barry Dilworth, target phone No. 2.) Dilworth referred to Morris as 'KOKY.' Barry Dilworth and Morris discussed if Dilworth had any marijuana and Dilworth told Morris that he didn't. Dilworth and Morris then discussed if either of them had been in contact with Damon Galbreath to see if Galbreath had any marijuana. It was Dilworth's belief that Galbreath was out of cocaine at the present time."

The other interception summaries are equally pertinent to the request for continued interceptions.

[7] During this first thirty day extension, on 6/6/00, the number of T-2 changed from 314-369-8120 to 314-497-4480. The ESN did not change. The original and extension Orders

For the second extension, the government introduced:

Gov.Ex.14	Applications with attached authorizations
Gov.Ex.15	Affidavit (note number change on T-2)
Gov.Ex.16	Order authorizing continued interception of wire, oral and electronic communications.
Gov.Ex.17	Order to Service Provider Southwestern Bell Wireless, T-1, 314-952-3603
Gov.Ex.18	Order to Service Provider Sprint Cellular, T-2, 314-497-4480 (note change to phone number of T-2)
Gov.Ex.19	Order to Service Provider Southwestern Bell Telephone Company, T-3, 314-741-7804

This application includes the initial target subjects as well as new targets: **Kahlil Morris, Barry Dilworth, Damon Galbreath, Lashon Holmes, Vernell Latchinson, Deron Hendrix, Ihsan Mahmud, Matthew Mayo, Michael Goodwin, Randy Davis, Paul Dilworth, Kenneth Dilworth, Kytina Rene Morrow** along with ***Bruce Randall, Maurice King and "Ro"*** and others then unknown. The court finds that in all respects this Application complies with the requirements of the statute as more fully set out above in Section II. The Affidavit in Support contains the statutorily required information about the target subjects, the qualifications of SA Ebner, the target telephones and locations and incorporates by reference the Affidavit in Support of the government's original application and Judge Limbaugh's Order as well as the Application and Affidavit in Support for the first extension and Judge Limbaugh's Order. The Affidavit explains the information acquired from the wiretaps so far and the investigation to supplement it. It specifies the two additional persons expected to be intercepted/incriminated together with their pedigrees. It gives a nickname for a third target. It gives summaries by each target telephone of pertinent interceptions and the information gleaned therefrom.[8] As in the original affidavit, it describes alternative investigative techniques,

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both authorized interceptions of any subsequently changed numbers using the same security I.D. or cable pairs and binding posts.

[8] Without repeating the contents of each of the summaries, one example of the information is representative of all the reported interceptions.

prior applications, compliance with minimization and a requested time of no more than thirty days. The Affidavit complies in all respects with the statute as does Judge's Limbaugh's Order authorizing extension of interception of wire communications signed 6/29/2000 and his Orders to service providers.

VI. POST-AUTHORIZATION DUTIES

Title III imposes certain post-authorization duties which include conducting the interceptions in such a way as to minimize the interception, providing periodic reports to the court, sealing the documents and recordings and sending an inventory/notice to those whose conversations were intercepted.

A. Minimization

18 U.S.C. § 2518(5) provides:

> "Every order and extension thereof shall contain a provision that the authorization to intercept...shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter... . In the event the intercepted communication is in a code or foreign language and an expert in that foreign language or code is not reasonably available during the interception period minimization may be accomplished as practicable after such interception.

Judge Limbaugh's Order authorizing the wiretaps contains such a minimization requirement. Gov.Ex. 3, Order at p.81-82.

> With regard to target phone No. 2, Interception No. 2628 occurred on 6/9/2000 at 10:50 P.M., and was an outgoing call to telephone number 314-952-9572, subscribed to by Damon Galbreath, 1126 Laredo, St. Louis, Missouri. Dilworth and Galbreath discussed a pending narcotics transaction. Galbreath advised "it's a done deal" and that he was "opening one up right now to make sure it weighed right." (Galbreath is in possession of a quantity of narcotics and checking its weight). Galbreath advising Dilworth to call him back as soon as he was ready to consummate the deal.

The other interception summaries are equally pertinent to the request for continued interceptions.

At the hearings, SA Ebner testified that pursuant to the directive in the statute and Judge Limbaugh's Orders, a "minimization meeting" was held. On May 1, 2000 prior to Judge Limbaugh signing the authorization to intercept, Assistant United States Attorney Antoinette Decker and SA Ebner met with all the agents/officers who would be monitoring the wiretap. The monitors had been provided copies of the Application, SA Ebner's Affidavit in Support of the Application and Judge Limbaugh's Order. Ms. Decker reviewed with them the letter entitled "Guidelines for the Conduct of Electronic Surveillance of Land Line Telephone Facility (314-741-7804) and Cellular Telephone Facilities (314-952-3603) and (314-369-8120)." Gov.Ex.7. Each agent was required to initial a copy of Judge Limbaugh's Order to indicate he/she had read the Application, Affidavit, Order and the guidelines letter. The guidelines discuss all aspects of the wiretap including the recording of any monitored interception and the preparation of a written memorandum contemporaneous with the over-hearing of a conversation. Detailed minimization requirements were thoroughly explained in writing and orally at the meeting and the agents had an opportunity to ask Ms. Decker and SA Ebner any questions. Any agent who was brought in to assist in the monitoring at a later date was required to read and initial the documents and SA Ebner was available for questions.

The guidelines discuss spot monitoring for a reasonable period of time not to exceed two minutes to determine whether any of the target subjects were present and participating in a conversation. If a target was engaged in conversation, the interception could continue for a reasonable time, usually not in excess of two minutes, to determine whether the conversation concerned criminal activities. The spot monitoring could occur as often as reasonable but in any event at least one minute should elapse between interceptions. If during the spot monitoring it was determined that different or additional individuals were engaged in criminal conversation, the monitoring could continue despite the fact that a named subject was not engaged in the conversation

until the conversation ended or became non-pertinent. The guidelines discuss what to do if a conversation may relate to drug crimes or other crimes and how to handle conversation that experience shows are always innocent or always criminal.

The totality of SA Ebner's testimony shows that every effort was made to fulfill the minimization requirements in the most professional manner possible. To the extent some, in fact almost all, of the pertinent conversations contain some sort of "code" for narcotics trafficking, the agents, who were experienced in the use of such jargon, attempted through initial spot monitoring to decipher the code and SA Ebner compared notes of the various monitors to come to a consensus about the meaning of the code words.

Whether the government complied with the requirements of Section 2518(5) is determined by an objective, reasonableness standard. United States v. Williams, 109 F.3d 502, 507 (8th Cir. 1997) citing Scott v. United States, 436 U.S. 128, 137-38 (1978). Factors to be considered include the scope of the enterprise [here it was extensive], the agents' reasonable expectations of the contents of the calls [they were all fully briefed on what to expect] the extent of judicial supervision [the government provided regular comprehensive ten day reports to Judge Limbaugh], length and origin of a call [thorough logs were kept] and the use of coded or ambiguous language. Williams, 109 F.3d at 507. More extensive wiretapping is reasonable when "the conversations are in the jargon of the drug trade." Id. at 507 quoting United States v. Macklin, 902 F.2d 1320, 1328 (8th Cir. 1990), cert.denied, 498 U.S. 1031 (1991). To whatever extent there was after-the-fact minimization, it was done in full compliance with the statute. See e.g. United States v. Padilla-Pena, 129 F.3d 457, 462-463 (8th Cir. 1997) (permissible for Spanish-speaking translators to minimize after-the-fact).

The undersigned finds no violation of the statute or Judge Limbaugh's Orders and notes that "a party challenging the validity of a federal wiretap order must show a substantial, not just technical

deviation from the requirements of the statute". United States v. Fairchild, 187 F.3d 769 (8th Cir. 1999). In the present case, **no** deviation has been shown either by way of cross examination at the hearings or in the memoranda in support of motions to suppress by the defendants.

B. Ten Day Reports

18 U.S.C.§ 2518(6) states:

> Whenever an order authorizing interception is entered pursuant to this chapter, the order may require reports to be made to the judge who issued the order showing what progress has been made toward the authorized objective and the need for continued interception. Such report shall be made at such intervals as the judge may require.

18 U.S.C. § 2518(6). Here the government provided a report every ten days for each of the target telephones. Gov.Ex.25-33 are the reports for T-1; Gov.Ex.34-42 are the ten day reports for T-2; and Gov.Ex.43-51 are the ten day reports for T-3. Each report is signed by Assistant United States Attorney Antoinette Decker and Judge Limbaugh. Generally, they state that the phones are not monitored twenty-four hours a day; that monitoring is conducted in two basic daily shifts from 6:00 A.M. to 4:00 P.M. and 4:00 P.M. to 2:00 A.M. If any disruptions or power outages occur during the monitoring, this information is noted in the report together with an explanation for the disruption. The reports state generally that the information sought by the intercepts has not been fully achieved and thus the reports request continued monitoring. To each report is attached a tally sheet documenting the entire ten day period, detailing the number, type and pertinence of each interception. A second attachment contains logs and synopses of some relevant, pertinent interceptions. SA Ebner testified at length about the method of preparing and editing the synopses. He again testified that although the written synopses could be edited, the actual conversations could not be changed or altered in any manner. Each synopsis contains the initials of the person making the synopsis or edit. The requirement for such periodic reports is discretionary on the part of the

judge and here, there was no violation of the reporting provisions of Judge Limbaugh's Order or the statute.

C. Sealing

18 U.S.C. § 2518(8)(b) provides that all applications made and orders granted under Title III shall be sealed by the judge. All documents in this case were clearly marked "Filed Under Seal" and were kept in the Clerk's Office of the United States District Court of the Eastern District of Missouri in a place designated for such sealed documents. No such documents were disclosed to any person except upon authorization by the court following the indictment of fourteen of the named targets and/or pursuant to 18 U.S.C. § 2517. There was no violation of the document sealing provisions of 18 U.S.C. § 2518(8)(b).

18 U.S.C. §2518(8)(a) provides that the contents of any wire, oral or electronic communication intercepted shall be recorded by tape or wire or other comparable device. Here, all intercepted calls from the target phones were recorded on three Magneto Optical disks. The statute requires that the recordings be done in such a way to protect the recording from editing or other alterations. See Gov.Ex.7, Guidelines for Monitoring Electronic Surveillance, in which this requirement is spelled out in detail at ¶5. SA Ebner testified at length about the maintenance of the Magneto Optical disks in a room separate from the room in which the monitoring of the calls was conducted. The disks were in the custody of a GS tech who was at all times responsible for their security. SA Ebner testified that the recordings themselves could not be and were not altered.

18 U.S.C. § 2518(8)(a) also provides that immediately upon expiration of the order or extensions thereof, the recordings shall be available to the judge issuing the orders and sealed. SA Ebner testified that the wires went down at midnight on Friday, July 27, 2000. Early Monday morning he obtained the three Magneto Optical Disks from the GS tech and he and AUSA

Antoinette Decker presented them to Judge Limbaugh together with an order requesting they be sealed. Gov.Ex.20. Judge Limbaugh ordered the three disks be sealed and held in the custody of DEA for a period of ten years in a manner so as to prevent editing, alteration or destruction. 18 U.S.C. § 2518(8)(a). Gov.Ex.21. SA Ebner testified the three Magneto Optical disks were placed in a DEA evidence bag, taped at the top and sealed with a heat seal. He signed the envelope as did Judge Limbaugh. SA Ebner initialed the heat seal. SA Ebner personally put the envelope in the non-drug vault at the DEA office in Clayton, Missouri. Sealing requirements were fully observed and there was no violation of the statute.

D. Inventory/Notice

18 U.S.C. § 2518(8)(d) provides that within a reasonable time but not later than ninety days after the filing of an application for a wiretap, the person named in the order or anyone else determined by the judge in his discretion must be sent an inventory of the persons intercepted, notice that such an order was entered including its date and the period of authorization, and the fact that during the period, wire, or oral or electronic communications were intercepted. The section further provides "that on an *ex parte* showing of good cause to a judge of competent jurisdiction the serving of the inventory required by this subsection may be postponed." 18 U.S.C. § 2518(8)(d). In the application for sealing the three Magneto Optical disks, the government requested and was granted postponing the notice requirement of 18 U.S.C. § 2518(8)(d) because the investigation was still continuing. Gov.Ex.20 and Gov.Ex.21. On October 26, 2000, the government requested an additional period of ninety days before sending out notice of interception again because the investigation of the named targets was continuing. Judge Limbaugh granted the request. Gov.Ex.22. On February 8, 2000, the government filed an inventory list of all the identifiable persons whose communications were intercepted. Gov.Ex.23. Judge Limbaugh ordered that each person on the

inventory list be served with a copy of the notice. Gov.Ex.24. All of the identified persons named in the Application and Order authorizing the wiretaps were properly served. In any event, post-interception notice is not intended to serve as a restraint on the wiretap procedure. United States v. Donovan, 49 U.S. 413, 434 (1976). Here, all of the named targets received notice. None of the indicted targets has standing to object to any discretionary notice either ordered or not ordered by the court. There was no violation of the notice provisions of the statute.

VII. FOURTH WIRETAP

During the course of the investigation and approximately six weeks into the wiretapping of T-1, T-2, and T-3, it became obvious that a fourth phone was being used in the course of the narcotics conspiracy by one of the target subjects to such an extent that a wiretap of that phone was necessary. It was a cell phone bearing the number 314-952-9572 subscribed to by Damon Galbreath. This target phone is known as "T-4".

The documentation filed and the procedures followed by the government in applying for and obtaining authorization for the wiretapping of T-4 as well as all post-application procedures were exactly the same and every bit as thorough as that utilized for the other three wiretaps.[9] The law set out above applies to this wiretap and will not be repeated.

The proper **authorizations** were attached to the Application. Gov.Ex.52, p. 920-922. The **Application** contained all the statutorily required elements and included the identity of the law enforcement officer making the application, the person authorizing the application, a full and complete description of the facts relied on, including details of the alleged offense, a description of the facilities where the communications were to be intercepted, a description of the communication

[9] Because AUSA Antoinette Decker was unavailable, the original Application for the wiretap on T-4 was prepared and submitted to Judge Limbaugh by AUSA Kenneth R. Tihen.

sought to be intercepted, the identity of the persons whose communications would be intercepted, whether other investigative procedures had been tried, the period of time for which the interception was requested and whether previous applications involving the same facilities, persons or places had been made. 18 U.S.C.§ 2518(1). Specifically, the Application states that the target subjects, Damon Galbreath, Michael Goodwin, Kahlil Morris, Barry Dilworth and Coby Harris and others yet unknown have committed, are committing and will continue to commit violations of 18 U.S.C. § 841(a)(1), 843(b) and 846. There was no error in the form of the Application. Gov.Ex.52.

The Application was supported by a fifty-one page **Affidavit** which, as noted above in fn.2 is incorporated by reference as if fully set out herein. Again, a general summary may be helpful to the court. The Affidavit signed by SA Ebner, specifies the target subjects and their pedigrees and the wiretap sought (for T-4). It covers numbers subsequently assigned to the ESN of the target phone as well as background conversations in the vicinity of the phone. The Affidavit incorporates the Affidavit in Support of the Applications signed May 1, 2000 as well as the Affidavit in Support of the Continued Interceptions signed May 30, 2000. It gives background information on the various co-conspirators similar to that in the original Affidavit. It adds information regarding a car stop of Coby Harris at the airport and telephone records from his stay in St. Louis which showed a call to a predecessor phone belonging to Damon Galbreath. On June 8, 2000, Damon Galbreath called Southwestern Bell Wireless and asked to have his cell phone number changed from a second predecessor phone to the instant target phone, T-4. T-4 has the same ESN as both of the predecessor phones. The Affidavit states SA Ebner believes Galbreath would continue to use T-4 in the same manner as he had used the predecessor phones as documented in the Affidavit. It is to be noted that the Wire Interceptions section of the Affidavit states that Galbreath, while using predecessor phone

#2, was intercepted on the original wiretaps of the three target phones while negotiating narcotics transactions.

The Affidavit gives details about CS #1's involvement with the target subjects similar to that given in the original Affidavit. See Affidavit, p.932-943.

The Affidavit also gives details about CS #2's involvement with the target similar to that given in the original Affidavit. See Affidavit, p.943-946.

Pen Register analysis of T-4 and the predecessor phone is set out at page 947-950. It shows the pertinent phone numbers called by or calling the predecessor phone with the subscriber information, call count figures and an explanation of relevancy. The call counts show an extraordinarily large number of calls by and between predecessor phone #2 and various targets or associates or relatives of targets.

In addition, the Affidavit detailed the wire interceptions from the other three target phones relating to predecessor phone #2. The intercepts show that Galbreath used the predecessor phone to negotiate narcotics transactions. Two intercepts are representative:

> Interception #241 occurred on May 4, 2000 at approximately 4:06 PM and is a conversation between Damon Galbreath and Barry Dilworth. Regarding a pending narcotics transaction between the two. Damon Galbreath advised Barry Dilworth, "same old flavor (cocaine) again, a few of them (kilograms) around. I'm looking out for you to see if you needed some." Dilworth advised, "Oh yeah, always." Galbreath questioned Dilworth about what Mike (Goodwin) was going to be doing, because he just gave him $5,000 to "pay that old man." Dilworth advised that Goodwin "needs his people (source) to come on." Galbreath replied that Goodwin "may have cut his drawers (destroyed his relationship) with his people" stating that Goodwin had a "nice run," (selling cocaine), however could not continually abuse his folks (sources of narcotic supply) like that. Dilworth agreed, stating especially if Goodwin doesn't "put up something" (currency). Galbreath agreed stating that he kept telling Goodwin to do just that. Galbreath went on to state that he and Goodwin are partners, and he will help him out, however, he has to look after his family as well.
>
> Regarding their pending cocaine deal, Galbreath advised Dilworth to put something in his (Galbreath's) ear (pager). Dilworth asked Galbreath if he "had them whole"(full kilograms). Galbreath replied that he did. Dilworth advised that he

> would call Galbreath in about an hour. Galbreath replied that he would "have it on deck" (have the cocaine ready).
>
> Approximately one hour later, Dilworth placed the figure 21,000 in Galbreath's pager in Interception #253 at approximately 5:12 PM. This amount would be consistent with kilogram prices in the St. Louis drug marketplace.

Affidavit p. 29-30, ¶45-47.

The Affidavit also discussed the surveillance accomplished by the agents to corroborate the information gleaned from the wiretaps.

The Affidavit describes search warrants executed from 1992 to the present on the residence of the target subjects or their relatives or associates or at locations where they were arrested.

The Affidavit spells out the need for interception and concludes that a wiretap is the only available technique that has the reasonable likelihood of securing the updated evidence necessary to prove beyond a reasonable doubt that the target subjects were committing the enumerated crimes. Affidavit p. 957-59.

As with the original Application and Affidavit (as set out above), the Affidavit in Support of the Application for T-4 details alternative investigative techniques and why their use was insufficient, they could not be used or their use posed problems that could threaten the investigation. See Affidavit, p.960-972. The Affidavit notes no prior applications for interception for wire, oral or electronic surveillance on any of the targets except for the 1993 intercepts of Galbreath.

The Affidavit discusses minimization and requests a thirty day period of interception for T-4. The Affidavit is signed by SA Ebner and Judge Limbaugh on June 15, 2000.

The law on the subject of **probable cause** is set above at p. 15-16 and will not be repeated. However, even this abbreviated general summary of the Affidavit shows that there clearly was probable cause that the communications concerning the named offenses would be obtained through the interception of calls on T-4. The Application and Affidavit contained the fair probability that

the wiretap would uncover evidence of the crimes. United States v. Fairchild, 189 F.3d 769, 775 (8th Cir. 1999).

The law on the subject of **previous applications** is set out above at p. 16-17. There was full compliance with the statute.

The law on the subject of **other investigative procedures** is set out above at p. 17-18. The Affidavit describes in detail the other investigative techniques employed. As in the discussion of the original Affidavit above at p.17-19, the necessity for the wiretap on T-4 was fully demonstrated. United States v. Shaw, 94 F.3d 438, 444 (8th Cir. 1996), cert.denied, 519 U.S. 1100 (1997). There was full compliance with the statute.

Judge Limbaugh's Order authorizing interception and Order to Service Providers are in full compliance with the statute. Gov.Ex.54-55, See discussion above at p.19-21.

On July 17, 2000, the government applied for and was granted an extension of time for the wiretap. The law on extensions is set out above at p. 21-24. On July 17, 2000, the government applied for and was granted by the Honorable Carol E. Jackson[10] an additional thirty (30) days to intercept T-4.[11] The government introduced:

Gov.Ex.56	Application with attached authorizations
Gov. Ex.57	Affidavit in Support
Gov. Ex.58	Order authorizing continued interception of wire communications
Gov.Ex.59	Order to service provider, Southwestern Bell Wireless, T-4, 314-952-9572

The Affidavit in Support of the Application for continued interception includes the targets and the qualifications of SA Ebner, the target phones and incorporates by reference the previous

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[10] Judge Limbaugh was unavailable.

[11] It is to be noted that there was a two day gap in applying for the extension because the authorization from the Department of Justice had not yet arrived. All equipment was turned off on July15, 2000 when the previous Order expired and was not turned back on until July 17, 2000 when the Order was signed by Judge Jackson.

Application and Order. The Affidavit explains the information acquired from the wiretap(s) so far and the investigation to supplement it. The Application and Affidavit in Support comply in all respects with the statute as does Judge Jackson's Order authorizing continued interceptions and her Order to the service provider.

The **post-authorization duties** for T-4 were complied with in all respects and all **minimization** requirements were met. There were no new agents sitting the wiretap therefore the agents were familiar with the guidelines, Gov.Ex.7, the explanations previously given by AUSA Decker and questions answered by SA Ebner. 18 U.S.C. § 2518(5) was meticulously observed.

Ten day reports were provided pursuant to 18 U.S.C. § 2518(6). See Gov.Ex.60-65.

All the documents were filed under **seal** and the Magneto Optical Disk of the T-4 wiretap was sealed in Judge Limbaugh's presence in the same manner as discussed above pursuant to 18 U.S.C. 2518(8)(a) and (b). See Gov.Ex.66-67. It was placed in the non-drug vault at DEA's office in Clayton by SA Ebner. Judge Limbaugh's Sealing Order also orders that the notifications requirements be postponed as to all parties intercepted during that particular wiretap until further order of the court. Gov.Ex.67. The **inventory/notice** requirement of 18 U.S.C. § 2518(8)(d) was signed on February 8, 2001. Gov.Ex.68. Notice of the interception was sent to each person identified on the wiretap in compliance to the statute.

CONCLUSION

Having considered the extensive documentation provided by the government, the testimony of SA Ebner, the extensive cross examination of counsel for defendants and having analyzed the law in connection with all the available facts, the undersigned finds that the communications intercepted on wiretaps T-1, T-2, T-3 and T-4 should not be suppressed. All statutory requirements were met or exceeded.

ACCORDINGLY,

IT IS HEREBY RECOMMENDED that the Motion of defendant Damon Galbreath to Suppress Interception of Wire, Oral, or Electronic Communications be **DENIED**. [158]

IT IS FURTHER RECOMMENDED that the Motion of defendant Michael Goodwin to Suppress Illegally Obtained Electronic Surveillance be **DENIED**. [171-1]

IT IS FURTHER RECOMMENDED that the First Amended Motion of defendant Michael Goodwin to Suppress the Contents of Any Electronic Surveillance be **DENIED**. [206]

IT IS FURTHER RECOMMENDED that the Motion of defendant Mark Pearson to Suppress Evidence and Statements to the extent this Motion applies to wire, oral or electronic surveillance be **DENIED**. [138]

IT IS FURTHER RECOMMENDED that the Motion of defendant Deron Hendrix to Suppress the Contents of Any Electronic Surveillance be **DENIED**. [180]

IT IS FURTHER RECOMMENDED that the Motion of defendant Randy Davis to Suppress Contents of Wire, Oral, or Electronic Communications be **DENIED**. [178]

IT IS FURTHER RECOMMENDED that the Motion of defendant Terrance Jones to Suppress (Title III Wiretaps) be **DENIED**.[203]

The parties are advised that they have eleven (11) days in which to file written objections to this report and recommendation pursuant to 28 U.S.C. §636(b)(1), unless an extension of time for good cause is obtained, and that failure to file timely objections may result in a waiver of the right to appeal questions of fact. See Thompson v. Nix, 897 F.2d 356 (8th Cir. 1990).

/s/
MARY ANN L. MEDLER
UNITED STATES MAGISTRATE JUDGE

Dated this _____ day of September, 2001.